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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Amador)

THE PEOPLE,

Plaintiff and Respondent,

v.

JENNIFER RENAE CECERE,

Defendant and Appellant.

C085780

(Super. Ct. No. 17CR25813)

Defendant Jennifer Renae Cecere was responsible for a traffic collision resulting in the death and serious injury of the drivers of two other vehicles. Defendant pled guilty to gross vehicular manslaughter while intoxicated, driving under the influence of alcohol and causing injury, and driving with a blood-alcohol content of .08 percent and causing injury. Defendant also admitted inflicting great bodily injury. On appeal, defendant challenges the trial court's finding of factors in aggravation to support imposing the six-year midterm for gross vehicular manslaughter while intoxicated. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 17, 2017, about 10 a.m., defendant went to a friend's house in Pioneer. While there, defendant drank a 1.5-liter bottle of wine. Defendant, along with defendant's two-year-old daughter, left her friend's house around 1:50 p.m. to drive to her other daughter's school in Pine Grove after stopping by her parents' house in Ranch House Estates. Multiple witnesses saw defendant drive at a high rate of speed, tailgate other drivers, pass drivers over double yellow lines (including forcing one oncoming driver to "drive to the shoulder"), and pass drivers at a high rate of speed using the right shoulder.¹

As defendant entered a curve about 80 miles per hour, she crossed over double yellow lines and collided head-on with a pickup truck being driven by Norman Vogt. The collision lifted Vogt's truck off the ground, and it landed on top of a utility van driven by David Hoppe and traveling behind Vogt. Defendant's vehicle spun toward the right shoulder, where it stopped. Vogt was pronounced dead at the scene, and Hoppe was eventually diagnosed with a long-term heart condition caused by the accident. Defendant's blood-alcohol content was determined to be .131 percent at the scene of the accident and .109 when tested at the hospital three and one-half hours after the accident.

At sentencing following defendant's guilty plea, the court stated, "When I look at the facts of this case as set forth in the memorandums and the probation report you risked your child's life, you risked everybody's life on the road. You passed people on the right-hand side of the road going eighty miles an hour. You crossed over double yellow lines. You hit someone head-on going to school to take them cupcakes. It's a disturbing scenario, very disturbing."

¹ Although not appearing in the record, defendant presumably dropped off her two-year-old daughter at her parents' house before the collision.

The court found two aggravating factors related to gross vehicular manslaughter while intoxicated: (1) there were multiple victims harmed by defendant's conduct; and (2) defendant's crimes were "an act of violence." In mitigation, the court found the defendant lacked a criminal record, and she accepted responsibility for her actions.

DISCUSSION

Defendant challenges the trial court's sentencing decision. She claims the court sentenced her to the middle term by improperly considering as an aggravating factor that her conduct was an " 'act of violence.' " Defendant contends the court erred because " 'an act of violence' " is "demonstrably inherent" in the offense of gross vehicular manslaughter while intoxicated and therefore cannot be considered as an aggravating factor. We disagree.

When sentencing a defendant for gross vehicular manslaughter while intoxicated, the court has discretion to select any one of the three available terms it deems appropriate and "best serves the interests of justice." (Pen. Code, § 1170, subd. (b).) Courts generally have wide discretion to weigh both aggravating and mitigating factors, and a court may even disregard or minimize mitigating factors without stating its reasons. (*People v. Lai* (2006) 138 Cal.App.4th 1227, 1258.) But "[a] fact that is an element of the crime on which punishment is being imposed may not be used to impose a particular term." (Cal. Rules of Court, rule 4.420(d).)

"Even with the broad discretion afforded a trial court under the [present] sentencing scheme, its sentencing decision will be subject to review for abuse of discretion." (*People v. Sandoval* (2007) 41 Cal.4th 825, 847.) "The trial court's sentencing discretion must be exercised in a manner that is not arbitrary and capricious, that is consistent with the letter and spirit of the law, and that is based upon an

‘individualized consideration of the offense, the offender, and the public interest.’ ” (*Ibid.*, quoting *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 978.) A sentencing court abuses its discretion “if it relies upon circumstances that are not relevant to the decision or that otherwise constitute an improper basis for decision.” (*Sandoval*, at p. 847.)

Here, the trial court concluded defendant’s crimes were an act of violence in imposing the middle term. We disagree with defendant that “ ‘an act of violence’ ”² is inherent in the crime of gross vehicular manslaughter while intoxicated and therefore must not be considered in aggravation. “The elements of [gross vehicular manslaughter while intoxicated] are (1) driving a vehicle while intoxicated; (2) when so driving, committing some unlawful act, such as a Vehicle Code offense with gross negligence, or committing with gross negligence an ordinarily lawful act which might produce death; and (3) as a proximate result of the unlawful act or the negligent act, another person was killed.” (*People v. Wilson* (2013) 219 Cal.App.4th 500, 509.) Defendant’s conduct was distinctly more egregious than the “ordinary” offense of gross vehicular manslaughter while intoxicated. (See *People v. Castorena* (1996) 51 Cal.App.4th 558, 562 [trial court properly considered facts “exceeding those necessary to establish gross negligence” as aggravating factors]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [“The essence of ‘aggravation’ relates to the effect of a particular fact in making the offense distinctively worse than the ordinary”].)

² Given the trial court’s reference to California Rules of Court, rule 4.421, we presume the court, when referring to “ ‘an act of violence,’ ” was referring to California Rules of Court, rule 4.421(a)(1), which provides: “The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness[.]”

Defendant tailgated multiple cars, passed cars on the right shoulder while driving 80 miles an hour, passed other cars by crossing over double yellow lines -- even forcing one car driving in the opposite direction to “drive to the shoulder” -- and caused a head-on collision with a truck by again crossing double yellow lines while failing to appropriately navigate a curve in the road. Defendant was driving so fast that the collision caused Vogt’s truck to lift off the ground and land on top of Hoppe’s van traveling behind him. These facts constitute an “ ‘act of violence.’ ” because they demonstrate a degree of culpability exceeding that necessary to establish vehicular manslaughter with gross negligence while intoxicated.

Additionally, the court appropriately considered the aggravating factor of “multiple victims” when sentencing defendant for gross vehicular manslaughter while intoxicated. “ ‘A defendant who commits an act of violence . . . by a means likely to cause harm to several persons is more culpable than a defendant who harms only one person.’ ” (*People v. Oates* (2004) 32 Cal.4th 1048, 1063, quoting *Neal v. State of California* (1960) 55 Cal.2d 11, 20.) Our Supreme Court has held that a defendant convicted of causing either the death or serious injury of multiple people, each listed in a separate count, is subject to increased punishment for each victim. (*People v. Calhoun* (2007) 40 Cal.4th 398, 408.)

We conclude the trial court did not abuse its discretion by imposing the middle term for gross vehicular manslaughter while intoxicated.³

³ Defendant also argues it is reasonably probable the court would have imposed a more favorable sentence if it did not improperly consider the aggravating factor “ ‘an act of violence.’ ” Because we reject defendant’s argument that the court improperly considered the aggravating factor, we decline to address defendant’s second argument.

DISPOSITION

The judgment is affirmed.

/s/
Robie, J.

We concur:

/s/
Raye, P. J.

/s/
Duarte, J.